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7 EDWARD MUSGRAVE,
8 Plaintiff,
9 v.
10 ICC/MARIE CALLENDER'S GOURMET
11 PRODUCTS DIVISION,
12 Defendant.

Case No. 14-cv-02006-JST

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**ORDER TO SHOW CAUSE WHY THE
COMPLAINT SHOULD NOT BE
DISMISSED FOR LACK OF SUBJECT
MATTER JURISDICTION, VACATING
MOTION HEARING, AND DENYING
MOTION TO DISMISS WITHOUT
PREJUDICE**

24 Plaintiff Edward Musgrave states in his complaint that “[j]urisdiction is proper in this
25 Court under 28 U.S.C. § 1332 (diversity jurisdiction) and/or 28 U.S.C. § 1331 (controversy arising
26 under United States law).” ECF No. 28 ¶ 6.

27 Notwithstanding Plaintiff’s invocation of 28 U.S.C. § 1331, the complaint does not bring
28 any federal cause of action. As for diversity jurisdiction, nowhere in the complaint does Plaintiff
allege that the parties are diverse in citizenship or that the amount in controversy requirement is
satisfied. The complaint states that Plaintiff is a “resident of Concord, California” and that
Defendant “is a California Corporation with its principal executive offices located in San Jose,
California.” ECF No. 28 ¶¶ 8, 18. Plaintiff also fails to demonstrate that the amount in
controversy requirement is satisfied. Indeed, he mentions the requirement nowhere in his
complaint.

29 “[F]ederal courts have a continuing ‘independent obligation to determine whether subject-
matter jurisdiction exists.’” Leeson v. Transamerica Disability Income Plan, 671 F.3d 969, 975
30 n.12 (9th Cir. 2012) (quoting Arbaugh v. Y & H Corp., 546 U.S. 500, 514 (2006)). “[T]he party
31 asserting federal subject matter jurisdiction bears the burden of proving its existence.” Chandler v.
32 State Farm Mut. Auto. Ins. Co., 598 F.3d 1115, 1122 (9th Cir. 2010).

1 Therefore, Plaintiff is hereby ORDERED TO SHOW CAUSE why this action should not
2 be dismissed for lack of subject matter jurisdiction. Plaintiff is ordered to file a written response
3 no later than fourteen days from the date of this order. Defendant may, but is not required to, file
4 any response to this order by that same date.

5 The Court hereby VACATES the hearing on Defendant's Motion to Dismiss Plaintiff's
6 Complaint and Motion to Strike and DENIES the motion and the parties' associated requests for
7 judicial notice without prejudice. ECF No. 25, 30, 39. If it appears that the Court has jurisdiction
8 over this action, the Court will so advise the parties, and Defendant may then re-notice the matter
9 for hearing. The Court will then decide the motion on the currently filed papers.

IT IS SO ORDERED.

11 | Dated: November 3, 2014


JON S. TIGAR
United States District Judge

United States District Court
Northern District of California